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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/676,620	10/02/00	RICHTER	F 163.1406US01

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HM12/1011

EXAMINER

DELACROIX MUIRHEI,C

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/676,620

Applicant(s)
RICHTER et al.

Examiner
Cybille Delacroix-Muirheid

Art Unit
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 20) ☐ Other:

DETAILED ACTION

Claims 1-37 are presented for prosecution on the merits.

Information Disclosure Statement

Applicant's Information disclosure Statement received May 7, 2001 has been considered.

Please refer to Applicant's copy of the 1449 submitted herewith.

Claim Objections

1. Claims 19, 21-23 are objected to because of the following informalities: in claims 21-23, line 1, before "below" the "of" should be deleted and replaced with --are--. In claim 19, line 17, "antimicrobial" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Lucas et al., 4,410,442.

Lucas et al. disclose the invention substantially as claimed. Specifically, Lucas et al. teach an antimicrobial solution comprising C5-C12 fatty acids, preferably heptanoic acid, water, buffer and surfactants. Please see the abstract; col. 4, lines 19-22; col. 5, lines 13-17.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was

made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-17, 19-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews 5,569,461 and Kabara 5,208,257 in view of Richter et al., 5,234,719.

Andrews discloses topical antimicrobial compositions comprising 5-10% by weight capric or caprylic acid, 5-80 weight percent propylene glycol as well as additional antimicrobial agents. The compositions may be used in an udder wash or pre-dip to substantially reduce the population of organisms that cause mastitis. Please see the abstract; col. 2, lines 5-35; col. 3, lines 34-42; claims 1, 6-7.

Kabara discloses topical antimicrobial compositions comprising mixtures of C6-C18 antimicrobial fatty acids such as heptanoic acid, capric, caprylic acid and propylene glycol in an amount of about 5% to 60%. These compositions are stabilized to increase their efficacy in cold climates or conditions. Kabara further discloses a method for treating mastitis in an animal comprising administering an effective amount of the topical antimicrobial compositions. Please see the abstract; col. 3, lines 63 to col. 4, line 13; col. 6, lines 44-46; col. 7, lines 28-34; col. 8, lines 30-33; claims 1, 6 and 7.

Andrews and Kabara do not specifically disclose adding a freezing point depressant component; however, the Examiner refers to Richter et al., which disclose sanitizing compositions comprising octanoic acid and a component which may be used to contain various constituents in solution over various temperature ranges, wherein said component may comprise propylene glycol esters. Please see col. 8, line 62 to col. 9, line 3-12.

It would have been obvious to one of ordinary skill in the art to modify the compositions and methods of Kabara and Andrews to include the components of Richter et al. because one of ordinary skill in the art would reasonably expect the resulting compositions to remain stable and effective over various temperatures. Furthermore, maintaining such antimicrobial compositions at a stable phase in cold temperatures appears to be recognized by Richter and, especially, Kabara and one of ordinary skill in the art would be motivated to include freezing point depressants in the antimicrobial compositions. Moreover, the claimed freezing point temperatures/freezing point depressant properties would be obvious in the compositions of Andrews and Kabara since Kabara and Andrews disclose compositions containing propylene glycol at Applicant's claimed ranges.

With respect to the claimed ranges of fatty acids and freezing point depressants, it would have been obvious to one ordinary skill in the art to optimize the concentration of fatty acids and depressants such that the antimicrobial composition have optimal antimicrobial activity.

In addressing the claimed temperatures at which the claimed compositions are applied to the teats of animals, this is obvious and well within the capability of the skilled artisan.

Finally, concerning the claims drawn to a mixture of propylene glycol and glycerin, it would have been obvious to one of ordinary skill in the art to determine the optimum amount of depressants needed to maintain the stability of the antimicrobial compositions.

Conclusion

Claims 1-37 are rejected.

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Applicant: RICHTER et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227.


The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

CDM

Oct. 8, 2001



Cybille Delacroix-Muirheid
Patent Examiner Group 1600